



**Date:** Monday 19<sup>th</sup> December 2022  
**PINS Refs:** APP/X5210/C/22/3308835  
**Our Ref:** EN21/1029  
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Craig Maxwell  
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Temple Quay House  
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Bristol  
BS1 6PN

Dear Mr Maxwell

**Appeal by Mr Ronald Hofbauer of Trumros Ltd.**  
**Site address: 282 Finchley Road, London, NW3 7AD**

#### **Appeal against**

- **The service of an enforcement notice dated 16th September 2022 requiring permanent removal of the outbuilding including foundations; make good any resulting damage and restore the garden to its previous condition.**

The Council's case is set out in the planning officer's delegated report refusing the planning application to retain the structure (this report will be relied on as the principal Statement of Case), which details the site and surroundings, the site history and an assessment of the proposal, with the reasons for refusal and supporting policies followed in the addendum to that report detailing the requirements of the enforcement notice. Copies of these reports were submitted alongside the appeal questionnaires.

In addition to the documents sent with the questionnaire I would be pleased if the Inspector would take into account the following information and comments before deciding the appeal.

#### **1.0 Summary**

**1.1** The subject property is a large, semi-detached, 2 storey house currently in use as 9 residential flats. It is located on the north side of Finchley Road near the junction with Heath Drive, the property is not listed nor lies in a Conservation Area but the properties in Heath Drive adjoining the rear garden of the property are within Redington & Frognal Conservation Area.

**1.2** The area is typified by large, mature gardens and in the communal garden to this property a prefabricated outbuilding was installed on concrete foundations and with electric and air conditioning at the bottom of the garden sometime in 2019. The outbuilding takes up practically the entire width of the bottom of the garden.

**1.3** Retrospective planning permission was refused for the retention of the outbuilding in July 2022 and a warning given that enforcement action would be taken. The enforcement notice was issued in September for the following reasons;

- 1) *The outbuilding, by virtue of its size, design and siting, detracts from the nature conservation, biodiversity and amenity value of the rear garden and also fails to reduce the risk of flooding at the site, contrary to the aims of policies A1, A2, A3, CC2, CC3 and D1 of the Local Plan and SD2, SD4, SD5 and BGI 1 of the*

*Neighbourhood Plan.*

- 2) The outbuilding, by virtue of its size, design and siting, detracts from the character and appearance of the application site and the wider area, including the Redington Frognal Conservation Area, contrary to the aims of policies D1 and D2 of the Local Plan and SD4 of the Neighbourhood Plan.*
- 3) In the absence of an adequate Tree Survey and Arboricultural Impact Assessment, the applicant has failed to demonstrate the development does not cause unacceptable harm to trees, contrary to the aims of policies A3 of the Local Plan and BGI 2 of the Neighbourhood Plan.*
- 4) In the absence of an adequate noise and vibration assessment, the applicant has failed to demonstrate the development does not generate unacceptable noise and vibration impacts contrary to the aims of policies A1 and A4 of the Local Plan.*
- 5) The outbuilding, by virtue of its size, design and siting causes unacceptable harm to the amenity of surrounding residential occupiers by way of loss of visual privacy, overlooking and loss of outlook, contrary to the aims of policies A1 and A4 of the Local Plan and SD4 and SD5 of the Neighbourhood Plan.*
- 6) Failure to justify the need for active cooling by reducing and mitigating the impact of overheating through the application of the cooling hierarchy, thereby failing to minimise carbon dioxide emissions, contrary to policies CC1 and CC2 of the Local Plan and Neighbourhood Plan policy SD1.*

**1.4** This statement covers the appeal on grounds (a) that planning permission should be granted for the development and (g) that the time given to comply with the notice is too short.

## **2.0 Status of policies and guidance**

**2.1** In considering the application, the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case.

**2.2** The Camden Local Plan was adopted on the 3<sup>rd</sup>. July 2017 and the Redington and Frognal Neighbourhood Plan in September 2021.

**2.3** The latest NPPF was adopted in July 2021 and the Council's policies are in accordance in relation to this appeal.

**2.4** The Redington and Frognal Conservation Area Appraisal and Management Strategy was adopted in March 2000 and Special attention has been paid to the desirability of preserving or enhancing the character or appearance of the conservation area under s.72 of the Listed Buildings and Conservation Areas Act 1990 as amended by the Enterprise and Regulatory Reform Act 2013. The Redington and Frognal Neighbourhood Plan was formally adopted in 2021

**2.5** The Council also refers to supporting guidance documents. The Camden Planning Guidance (CPG) were adopted following the adoption of the Camden Local Plan in 2017.

**2.6** Please note that the full text of the relevant policies was submitted alongside the questionnaire documents.

## **3.0 Comments on the Appellant's Grounds of Appeal**

### **SUMMARY OF GROUNDS OF APPEAL**

The appellant's grounds of appeal (ground a) are addressed beneath:

3.1. The appellants only ground of appeal submitted relate to Ground (a) – that planning permission should be granted for what is alleged in the notice. The majority of the appellant's statement simply lists the Council's reasons for issuing the notice and states that they are wrong and offers very little analysis as to why they are wrong or why planning permission should be granted. There does not appear to be any commentary on ground (g) – that the period for compliance is too short i.e. as to what the appellant considers a reasonable period for compliance.

3.2 The appellants point a) in their grounds of appeal states that the outbuilding is well designed, of modest height and scale and constructed of attractive traditional materials. It then largely tackles reason 1 of why the Council issues the notice in that it challenges that the outbuilding detracts from the nature conservation, biodiversity and amenity of the rear garden and also challenges the contention that the development fails to reduce the likelihood of flooding and then states that the development does not conflict with any policies.

3.3 The reasons the Council considers the outbuilding is contrary to the above policies is contained at section 3 Impact on Garden Space of the planning delegated report for the refusal of planning permission. The outbuilding takes up a significant part of the garden, practically halving the amount of usable garden space and reducing the amount of permeable ground by nearly a third (see para 1.3 of planning report). No attempt has been made to mitigate its impact if the Council were to allow a development like this it would expect a green roof and planting to soften its impact.

3.4 Points B & C are largely identical both stating that the size, design and siting does not detract from the character and appearance of the application site, wider area and neighbouring Redington Froggnal C.A. and so does not conflict with any policies. These points correspond with the second reason for issuing the notice and are largely covered by section 6 - Design & Heritage. In short the development does not respect local context or character of the area as a leafy garden suburb.

3.5 Point D states the development does not cause unacceptable harm to trees and is therefore not contrary to the aims of policies A3 of the Local Plan and BG12 of the Neighbourhood Plan. This corresponds to the 3<sup>rd</sup> reason for refusal and for issuing the notice and is discussed at section 3 – Impact on Garden Space of the officers delegated report recommending refusal. The applicants have still not offered an arboricultural report or any evidence that this development has not caused unacceptable harm to any trees and therefore is contrary to policy

3.6 Point E states the outbuilding does not generate unacceptable noise and vibration and is therefore not contrary to policy A1& A4 of the Local Plan. This corresponds with the 4<sup>th</sup> reason for refusal and is covered in Section 4 – Impact on Neighbours of the Officers refusal report at paras 4.6 & 4.7). The units could have the potential to affect existing noise sensitive properties nearby. The nearest sensitive residential receptors are rear windows at 2 and 3 Heath Drive, only a few metres from the plant. The appellants have still not provided a noise report or any other evidence that the unit could operate without causing any harm to amenity levels and so is contrary to policy A4. Applications for plant such as this would be expected to be accompanied by an acoustic report showing that the plant can operate at noise levels at 15db below the background noise level. Planning conditions would also be imposed to guarantee that the plant continues to operate at a level that does not cause loss of amenity to residential neighbours.

3.7 Point f) corresponds to the 5<sup>th</sup> reason for issuing the notice and states that it is not accepted that the size, design and siting of the outbuilding causes unacceptable harm to the amenity of surrounding residential occupiers by way of loss of visual privacy, overlooking and loss of outlook and is therefore not contrary to policies A1 & A4 of the local plan and policies SD4 and SD5 of the Neighbourhood Plan. This is dealt with at section 4 – Impact on Neighbours of the delegated refusal report (see paras 4.1-4.5). The outbuilding is less than

3 metres away from the garden flat at 3 Heath Drive and is taller than the garden fence. Lights have been left on in the outbuilding all night that has also disturbed the neighbour.

3.8 Point g) corresponds to the 6<sup>th</sup> reason for issuing the notice and states that it is not accepted that the facilities for cooling the outbuilding have failed to minimise carbon dioxide emissions contrary to policies CC1 and CC2 of the Local Plan and policy SD1 of the Neighbourhood Plan. The Council discourages active cooling. Using active cooling systems increases energy consumption and carbon emissions, which would be contrary to the aims and objectives of policy CC1. Section 8.42 under CC2 states 'active cooling (air conditioning) will only be permitted where dynamic thermal modelling demonstrates there is clear need for it after all of the preferred measures are incorporated in line with the cooling hierarchy'. Section 8.43 states the cooling hierarchy includes:

- minimise internal heat generation through energy efficient design;
- reduce the amount of heat entering a building in summer through orientation, shading, albedo, fenestration, insulation and green roofs and walls;
- Manage the heat within the building through exposed internal thermal mass and high ceilings;
- Passive ventilation;
- Mechanical ventilation; and
- Active cooling.

The applicant has still not made any attempt to comply with these policies CC1 and CC2 by demonstrating that there is a clear need for the unit through thermal modelling and with all preferred measures within the cooling hierarchy having been reviewed against the criteria.

3.9 In the absence as to any justification as to why the appellants consider the compliance period of one month is not adequate the Inspector is urged to dismiss this ground of appeal.

## **4.0 Conclusion**

**4.1** Large outbuildings can be suitable in the rear gardens however they have to be sited well, built to an acceptable design, with sympathetic materials and a green roof that encourages biodiversity. The appellants have not tried to design a building that blends in with the surroundings or helps biodiversity rather have tried to create structure cheaply to benefit their own use. No attempt has been made by the appellant to discuss the design or need for this outbuilding either before he erected it or before he applied for planning permission. The outbuilding is poorly sited, limiting the wider use of the garden, is constructed with materials out of keeping with the host and neighbouring properties, including plastic windows, significantly increases the amount of non-permeable area in the garden increasing the likelihood of flooding, included mechanical ventilation and heating with no justification or appreciation of other methods that do not damage the environment is doing

**4.2** This outbuilding would not receive planning permission because of its poor design and siting, inappropriate materials including plastic windows and the development failure to realise any benefits for biodiversity.

## **Other Matters**

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**5.0** On the basis of information available and having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeals.

**5.1** Should any further clarification of the appeal submissions be required please do not hesitate to contact Gary Bakall on the above direct dial number or email address.

## **6.0 Suggested conditions should the appeal be allowed.**

1) Within 3 months all glazing to the side elevation (facing towards properties on Heath Drive) shall be obscured to a height of 1.8m internally and shall be permanently retained and maintained as such thereafter.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy A1 of the London Borough of Camden Local Plan 2017.

2) Full details in respect of a green roof shall be submitted to and approved by the local planning authority within 3 months. The details shall include:

- i. a detailed scheme of maintenance
- ii. a plan and section at a scale of 1:20 with manufacturers details demonstrating the construction and materials used
- iii. full details of planting species and density

The green roof shall be fully provided in accordance with the approved details and thereafter retained and maintained in accordance with the approved scheme.

Reason: In order to ensure the development undertakes reasonable measures to take account of biodiversity and the water environment in accordance with policies G1, CC1, CC2, CC3, D1 and A3 of the London Borough of Camden Local Plan 2017, and policies SD2, SD4, SD5 and BGI 1 of the Redington Frognaal Neighbourhood Plan.

3) Within 3 months full details of hard and soft landscaping and means of enclosure of all un-built, open areas must be submitted to and approved by the local planning authority in writing. Such details shall include details of any proposed new or replacement planting and post planting maintenance, earthworks including grading, mounding and other changes in ground levels.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policies A2, A3, A5, D1 and D2 of the London Borough of Camden Local Plan 2017.

4) External noise level emitted from plant, machinery/ equipment shall be lower than the lowest existing background noise level by at least 10dBA, by 15dBA where the source is tonal, as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity. Approved mitigation details shall be implemented within 3 months and thereafter be permanently retained.

Reason: To ensure that the amenity of occupiers of the development site/ surrounding premises is not adversely affected by noise from mechanical installations/ equipment in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

Yours sincerely

**Gary Bakall**

Deputy Manager, Planning Enforcement  
Culture and Environment Directorate